

UNITED STATES DISTRICT COURT FOR THE
FOR THE SOUTHERN DISTRICT OF ILLINOIS

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IN THE MATTER OF:

ALBERT P. LAUMANN PROPERTY
105 JUDITH LANE
CAHOKIA, ILLINOIS
DEAD CREEK SITE

CAUSE NO. 82-3236C

WARRANT FOR ENTRY
and

ORDER PURSUANT TO SECTION 104
OF COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND
LIABILITY ACT OF 1980

TO: Any officer, employee, or designated representative of the United States Environmental Protection Agency (U.S. EPA) and any U. S. Marshal. An affidavit having been made by Michael C. O'Toole, an United States Environmental Protection Agency Officer, that there has been a release of hazardous substance into the environment at Dead Creek between Judith and Queeny Avenues in Cahokia, Illinois, (Dead Creek site) and that this release may be presenting an imminent and substantial endangerment to the public health or welfare and that U.S. EPA has determined it is necessary to secure the Dead Creek site to mitigate the public health hazard, and that Albert P. Laumann has indicated unwillingness to allow U.S. EPA access to his property at:

105 Judith Lane
Cahokia, Illinois

to secure the Dead Creek site pursuant to Section 104(a) of CERCLA, 42 USC §9604(a); and the Court having found that reasonable grounds exist for an administrative entry and for issuance of a warrant for entry and order pursuant to Section 104 of CERCLA, 42 USC §9604, and the All Writs Act, 28 U.S.C. §1651;

IT IS HEREBY ORDERED AND COMMANDED that U.S. EPA, through its duly authorized representative, the U. S. Marshal, or any other Federal officer, and any duly designated contractor acting at the direction of U.S. EPA, shall be authorized and permitted to have entry and, as necessary, to reenter the above-described premises to erect a fence and thereby prevent access to contaminated segment of Dead Creek, as authorized by Section 104 of CERCLA, 42 USC §9604.

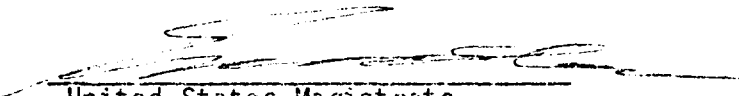
IT IS FURTHER ORDERED that a brief inventory identifying any materials removed from the premises be furnished by EPA to representatives of Albert P. Laumann at the conclusion of said inspection.

IT IS FURTHER ORDERED that the duration of this entry authorization shall be of such reasonable length to enable EPA representatives to complete satisfactorily those actions authorized by Section 104 of CERCLA, 42 USC §9604, but in no case longer than thirty days from the date hereof.

IT IS FURTHER ORDERED that the United States Marshal is hereby authorized and directed to assist EPA in such manner as may be reasonably necessary and required to execute this warrant and all the provisions contained herein.

IT IS FURTHER ORDERED that a prompt return of this warrant and any inventory shall be made to this Court showing that the warrant has been executed and that the entry has been completed within the time specified above.

Dated this 4 day of October 1982


United States Magistrate

10/4/82

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF:

ALBERT P. LAUMANN PROPERTY
105 JUDITH LANE
CAHOKIA, ILLINOIS
DEAD CREEK SITE

CAUSE NO. 82-3236C

APPLICATION FOR WARRANT
FOR ENTRY AND ORDER PURSUANT
TO THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND LIABILITY
ACT OF 1980

NOW COMES THE UNITED STATES, on behalf of the Administrator, United States Environmental Protection Agency (U.S. EPA), by Frederick J. Hess, United States Attorney, and Clifford J. Proud, Assistant United States Attorney, and moves this Court for a warrant and order authorizing U.S. EPA officials and their contractors, to enter upon land in Cahokia, St. Clair County, Illinois, at 105 Judith Lane (Laumann Property), as described further in the attached affidavit of Michael O'Toole, and then and there conduct activities in accordance with the National Contingency Plan, 40 C.F.R., Part 300, to respond to the release of hazardous substances that has occurred into Dead Creek between Judith and Queeny Avenues in Cahokia, Illinois (Dead Creek Site) and the endangerment to public health and welfare that has resulted.

This application is made pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly called "Superfund" or CERCLA, 40 U.S.C. 9601, et seq. The sections of CERCLA relied upon as authorizing EPA to enter and clean up the subject site, are 104(a), and 104(e). Most germane to this application is section 104(e)(1), 42 U.S.C. §9604(e)(1), which provides in material part:

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"For purposes of assisting in determining the need for response to a release under this title, or enforcing the provisions of this title (U.S. EPA) officers, employees, or representatives are authorized -

- (A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from".

U.S. EPA has determined that there has been a release of hazardous substances into the environment at Dead Creek, adjacent to the subject site, and that an immediate response by U.S. EPA under CERCLA is necessary to mitigate the threat to the public health and welfare that has resulted. CERCLA section 104(a) provides in material part that:

"Whenever (A) any hazardous substance is released, or there is a substantial threat of such release into the environment. . . the President (through U.S. EPA) is authorized to . . . take any other response measure consistent with the national contingency plan which the President (through U.S. EPA) deems necessary to protect the public health or welfare or the environment. . ."

The National Contingency Plan provides specific authority for the actions U.S. EPA is taking at the Dead Creek Site at 40 C.F.R. §300.65, as follows:

If the lead Agency determines that immediate removal is appropriate, defensive actions should begin as soon as possible to prevent or mitigate danger to the public health, welfare, or the environment. Actions may include, but are not limited to: . . . (3) Installing security fencing or other measures to limit access.

Accordingly, U.S. EPA has statutory rights in this case to enter the subject site, and to take any response measure (consistent with the national contingency plan) deemed necessary to protect (a) public health, (b) public welfare, and/or (c) the environment.

Although U.S. EPA was, and is, entitled to a warrantless entry upon the subject sites under Section 104(e) of CERCLA U.S. EPA sought the consent of the affected property owners in order to assure peaceful acquiescence to U.S. EPA actions. The details of U.S. EPA's efforts to obtain access by consent are set out in the affidavit of Mr. O'Toole, that is attached to this application. Of the twelve property owners contacted, all consented to U.S. EPA access to build the fence except Mr. Laumann. While U.S. EPA has no intention of waiving its right to warrantless access to this property under Section 104 of CERCLA, it is seeking a warrant here as a further assurance that there will be peaceful acquiescence by the property owner, Mr. Laumann, to U.S. EPA's actions in fulfilling its responsibilities under CERCLA and the national contingency plan.

Although its precise ruling is inapposite here, the Supreme Court decision in Marshall v. Barlow's, Incorporated, 436 U.S. 307 (1978), provides authority for this Court to issue a warrant where a statute (such as CERCLA §104(e)(1)) confers a right of entry. Further authority for the Court to issue the requested warrant and order is provided by the All Writs Act, 28 U.S.C. §1651.

The supporting affidavit demonstrates that (1) U.S. EPA has determined that a hazardous substance has been released into the environment at the Dead Creek Site, (2) the release is causing an imminent threat to the public health and welfare of the local citizens, (3) immediate action to secure the Dead Creek Site from public access is necessary to mitigate the threat to public health, (4) installation of a fence across a portion of the Laumann Property is necessary in order to secure the Dead Creek site, and (5) Mr. Laumann has

refused to voluntarily allow the U.S. EPA the access to the Laumann Property that is necessary for the U.S. EPA to secure the Dead Creek Site.

Respectfully submitted,

UNITED STATES OF AMERICA

FREDERICK J. HESS
United States Attorney

For *Robert Simpkins*
Clifford J. Proud
Assistant United States Attorney

OF COUNSEL:

Thomas W. Daggett
Assistant Regional Counsel
U.S. Environmental Protection Agency
Chicago, Illinois

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF:

ALBERT P. LAUMANN PROPERTY
105 JUDITH LANE
CAHOKIA, ILLINOIS
DEAD CREEK SITE

CAUSE NO. 82-3236C

AFFIDAVIT IN SUPPORT OF APPLICATION
FOR ENTRY AND ORDER PURSUANT TO THE
COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION AND LIABILITY ACT OF 1980

AFFIDAVIT OF MICHAEL C. O'TOOLE

State of Illinois

County of St. Clair

ss.

I, Michael C. O'Toole, being first duly sworn, state as follows:

1. I am currently an environmental engineer with the Waste Management Division, United States Environmental Protection Agency, Region V, Chicago, Illinois (U.S. EPA) and have been employed in this position since 1981. I am the On-Scene Coordinator (OSC) for the Dead Creek Site in Cahokia, Illinois. As an OSC I am responsible for coordinating and directing Federal response activities at abandoned hazardous waste sites.

2. The U.S. EPA became involved in addressing health hazards at the Dead Creek site at the request of State officials. The Illinois Environmental Protection Agency (IEPA) learned of Dead Creek contamination in May 1980 when local citizens reported that material in the creek bed would periodically smolder. The IEPA began a full field investigation of the site in August 1980 and collected numerous sediment samples of the creek. The analytical results of these samples revealed high levels of heavy metals, polychlorinated biphenyls, xylene, dichlorobenzene, trichlorobenzene and chloronitrobenzene (Attachment #1). Based on these results, the IEPA sealed off Dead Creek between Queeny and Judith Lanes from general access pursuant to Section 34 of


the Illinois Environmental Protection Act. In addition, 7000 feet of snow fence were installed around this portion of the creek. The IEPA seal order has never been challenged by any of the current landowners.

3. U.S. EPA personnel visited the Dead Creek site in March 1982 and discovered the snow fence trampled down in many areas. It was also reported that children frequent the creek. IEPA felt it was necessary to secure the site more adequately and requested U.S. EPA to assist in May 1982. As OSC I determined with the concurrence of U.S. EPA Washington that an immediate site security action would be necessary to mitigate an imminent threat to the public health and welfare of the local citizens from direct contact with the creek. In August 1982, U.S. EPA contracted with a local fence contractor to install a chain link fence around Dead Creek in place of the existing snow fence. The contractor has installed 80% of the fence to date.

4. The land that would be enclosed by the fence that U.S. EPA is erecting is the same land that has been under the IEPA seal order for well over a year. The IEPA granted U.S. EPA access to the site to erect the fence under their seal authorities (Attachment 2). I also contacted the twelve adjacent landowners to the creek to obtain their permission to install the fence. All landowners concurred but Mr. Albert Laumann. I discussed the matter of granting voluntary access to the U.S. EPA to install the fence with Mr. Laumann on four different occasions. He understood the need for a more secure fence but he was not going to grant access to his property voluntarily. Mr. Laumann indicated that he might retain counsel on this matter, and I asked him to notify me as soon as he did. On September 21, 1982, I talked with Mr. Laumann one last time. He told me he had decided not to retain counsel but he still did not want to voluntarily allow access.

In order to complete the site security action I must have access to Mr. Laumann's property so that the fence contractor may finish installing the chain link fence.

Further, affiant sayeth not.


MICHAEL C. O'TOOLE
Environmental Engineer
United States Environmental
Protection Agency, Region V

Subscribed and sworn to before me this 4 day of October 1982


UNITED STATES MAGISTRATE

Attachment #1

[illegible]

ILLINOIS EPA LABORATORY ANALYSIS OF SAMPLES TAKEN SEPTEMBER 8, 1990

N.D.=None Detected
*
L.A.C.=Maximum Allow-
able Concentration
(1/10 TL_m 96 for soil and
surface water)

ALL FOODS AND LABORATORY ANALYSIS OF SAMPLES TAKEN SEPTEMBER 8, 1950

N.D.=None Detected

A.C. = Maximum Allowable Concentration

11/10 RL_m96 for soil and
surface water

**Environmental Protection Agency****2200 Churchill Road, Springfield, Illinois 62706**

217/782-5544

July 22, 1982

Michael O'Toole, On-Scene Coordinator
United States Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

Re: Access to Dead Creek Site, Sauget

Dear Mr. O'Toole:

I am in receipt of your letter dated July 20, in which you request access to the above-referenced property, specifically that property between Judith and Queeny Roads, for the purpose of replacing the existing fence with a more secure fence. You correctly note that this Agency has sealed the site from general access pursuant to Section 34 of the Illinois Environmental Protection Act.

I am authorized to inform you that this Agency has approved your request. Naturally, this authorization is limited to the purposes and locations stated in your letter, and does not relieve representatives of your Agency and its contractors from responsibility for working out any access-related or other difficulties associated with the impact of your actions on adjacent properties.

I also wish to remind you that, to the extent possible, the existing fence originally erected by this Agency should be set aside and made available for removal by this Agency. You can simply advise me or Bill Child as to when and where the old fence will be available for pickup.

If you have any further questions, please don't hesitate to contact me. Thank you for your actions in securing this site.

Very truly yours,


Phillip R. Van Ness
Enforcement Programs Division

PRVN:bkm
cc: Bill Child
Bill Seltzer
Ken Mensing